UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

WALT DISNEY WORLD CO.,

Respondent

and Case No. 12-CA-25889

UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 1625,

Charging Party.

RESPONDENT, WALT DISNEY WORLD CO.'S
RESPONSE IN OPPOSITION TO GENERAL COUNSEL'S
MOTION TO STRIKE RESPONDENT'S REPLY BRIEF

Respondent, Walt Disney World Co. ("Respondent"), submits its Response in Opposition to the General Counsel's Motion to Strike Respondent's Reply Brief ("Motion to Strike"). As set forth below, the Motion to Strike should be denied.

While the General Counsel is correct that the Respondent neglected to serve the Reply Brief in the same manner in which it was filed, as Section 102.114(i) requires, the General Counsel fails to demonstrate any prejudice that the Respondent's technical noncompliance has caused. This omission is telling, because no demonstration of prejudice can be made. The General Counsel is not entitled to respond to the Reply Brief, so a delay of one or two days in receiving it does not impact any deadlines.

Nevertheless, upon learning that the Reply Brief was being served by mail, the General Counsel simply could have called counsel for the Respondent and asked for the Reply Brief to be sent electronically, and Respondent's counsel would have done so immediately. Rather than place a simple phone call, however, the General Counsel has chosen to waste the Board's, the Respondent's, and its own time by filing a motion, requiring the Respondent to file a response,

and requiring the Board to read both filings and make a ruling. Such tactics should not be rewarded.

Additionally, the General Counsel's assertion that the Respondent used "inflammatory language" in its Reply Brief is absurd. The fact is that it was the General Counsel who selectively used the phrase "driven by labor costs" in describing a plan that was in no way driven by labor costs. Moreover, the only place in the Answering Brief that the General Counsel explicitly mentioned labor costs was as part of the phrase "driven by labor costs." The General Counsel's use of that phrase is misleading because, as the General Counsel is certainly aware, whether an employer's decision is driven by labor costs is often the dispositive factor in a *First National Maintenance* analysis. Thus, the fact that the only place in the Answering Brief that the General Counsel referred to "labor costs" was as part of the phrase "driven by labor costs," created a misleading inference that required clarification. The Respondent's discussion of this matter in the Reply Brief was intended to ensure that the Board would not be misled as to the factors motivating the reorganization.

In sum, the General Counsel's Motion to Strike is completely without merit. Accordingly, for the reasons described above, the Respondent respectfully requests that the Motion to Strike be denied.[1]

Dated: August 21, 2009.

Respectfully submitted,

Peter W. Zinober
Florida Bar No. 121750
Email: zinoberp@gtlaw.com

[1] Another basis for denial of the General Counsel's Motion to Strike is that its purported explanation of the phrase, "driven by labor costs," is essentially an unauthorized surreply to the Respondent's Reply Brief.

Ashwin R. Trehan
Florida Bar. No. 0042675
Email: trehana@gtlaw.com

GREENBERG TRAURIG, P.A.
625 East Twiggs Street, Suite 100
Tampa, Florida 33602
Telephone: (813) 318-5725
Facsimile: (813) 318-5900
Attorneys for Walt Disney World Co.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of August, 2009, a true and correct copy of Respondent, Walt Disney World Co.'s Response in Opposition to General Counsel's Motion to Strike Respondent's Reply Brief has been furnished by electronic mail to Richard Siwica, Esq., Egan, Lev & Siwica, P.A., (rsiwica@eganlev.com), and Chris Zerby, Field Attorney, National Labor Relations Board, Region 12 - Tampa Office (christopher.zerby@NLRB.gov).

Attorney

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